

**(1912) 07 CAL CK 0012**  
**In the Calcutta High Court**

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| Nanda Gopal Sinha Roy and Others   | Vs | APPELLANT  |
| Srimati Pareshmoni Debi and Others |    | RESPONDENT |

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**Date of Decision :** 08-07-1912

**Acts Referred:**

**Citation :** 17 Ind. Cas. 478

**Hon'ble Judges :** Beachcroft, J; Ashutosh Mookerjee, J

**Bench :** Division Bench

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### Judgement

1. The subject-matter of the litigation which has given rise to this appeal belonged admittedly at one stage to a person of the name of Kali Prosad Singha Roy. ON the 4th December 1864, he executed a deed of gift in respect of this property in favour of his daughter, Dhan Kumari Debi, on the occasion of her marriage. The sole question in controversy in this litigation is, whether the property has passed by inheritance to the defendants, the sons of the sister of the original owner, or to the plaintiff, the daughter of the donee. The Courts below have concurrently held, in favour of the plaintiff.

2. In the present appeal, it has been argued by the defendants that the gift in favour of the daughter was limited for her life, and that, in any event, if there was an absolute gift in her favour, it was defeasible upon her death without male issue.

3. In support of the first contention, reliance has been placed upon two circumstances, namely, first, that the grant was for maintenance; and secondly, that the gift was by a Hindu to his daughter. In support of the Second contention, reliance has been placed upon a clause in the deed of gift which has been rendered as follows: "You are vested with the right and possession from this day, and you do remain in possession of the land held by myself down to your sons, son's son and so on in succession on payment of the rent thereof. You shall not give up any land comprised within the boundaries in favour of any body. Your sons, son's sons, etc, heirs in succession and not your husband or his heirs or any member of a different family shall be competent to own and hold the said

property." In our opinion, there is no substance in either of these contentions.

4. In so far as the first contention is concerned, we observe that the clause in the deed of gift upon the construction whereof the decision of this appeal really depends, stands in the vernacular as follows: Tomakay dan karilam. Adyakar tarikh haitay tumi svatvadhikari hailay. Uhar rajasva malguzari sarbaraha kariya putra pautradi kramay amar dakhali jamitay svatvaban o dakhalikar thakibay. Chowhaddir madhya jote kakakayo chharia dibayna. Ar ai bastutay tomar putra pautradi waris bhima tomar svasrmir kingba tahar waris othaba anya paribar svatvadhikari haibay na. Now, it may be conceded, that a grant for maintenance is presumably intended to continue for the life of the grantee. This is indicated by the decisions in the cases of Ram Chandra v. Jogendra Nath Bannerji 4 C.L.J. 399; Rameshar v. Gobardhan Lal 7 C.L.J. 202; Bhujanga Rau v. Ramayanna 7 M. 387; Rameshar Bakhsh Singh v. Arjun Singh 23 A. 194 : 28 I.A. 1(P.C.) and Rama Chandra Naiker v. Vijayaragavulu Naidu 31 M. 349 : 4 M.L.T. 198. The rule, however, is not inflexible; and, if there is any indication to the contrary, for instance, if by express terms a right of alienation has been vested in the maintenance-holder, as in the cases of Jogeswar Narain Deo v. Ram Chandar Dutt 23 I.A. 37 : 23 C. 670 and Saroda Sundari v. Kristo Jiban Pal 5 C.W.N. 300 or if the maintenance holder has been expressly constituted a full owner as in the case of Moti Lal Mithalal v. Advocate-General 35 B. 279 : 13 Bom. L.R. 471 : 11 Ind. Cas. 547 the grant must be deemed permanent, although it may be for the purpose of maintenance.

5. It need not also be disputed, as pointed out by their Lordships of the Judicial Committee in the cases of Moulvi Mahomed Shamsool Hooda v. Shewak Ram 2 I.A. 7 : 14 B.L.R. 226 : 22 W.R. 409 and Radha Prasad Mallik v. Ranimoni Dassi 35 C. 596 : 8 C.L.J. 48 : 12 C.W.N. 729 (P.C.) : 10 Bom. L.R. 601 : 5 A.L.J. 460 : 18 M.L.J. 287 : 35 I.A. 118 that when a deed of gift by a Hindu in favour of his daughter or any other female relations has to be construed, it must be borne in mind that a Hindu is ordinarily aware that a woman takes only a limited interest under the Hindu Law and that his desire presumably is that his estate should not pass out of his family and be vested in a different family. This rule again is not inflexible and it cannot be disputed that if there are appropriate words in the deed of gift, although it may be in favour of the daughter or of the wife, it may have to be treated as a gift in perpetuity. Suraj Mani v. Rabinath Ojha 30 A. 84 : 5 A.L.J. 67 : 18 M.L.J. 7 : 12 C.W.N. 231 (P.C.) : 10 Bom. L.R. 59 : 7 C.L.J. 131 : 3 M.L.T. 144 : 35 I.A. 17; Thakur Parshad v. Jamna Kunwar 31 A. 308 : 6 A.L.J. 420 : 2 Ind. Cas. 474. Now, in the case before us, the gift is made in favour of the daughter, and, at the same time, it is expressly stated that it is to be held by her down to her sons son's sons etc., and so on in succession. These words create a permanent estate, as is clear from the decision of their Lordships of the Judicial Committee in the cases of Ramlal Mukerjee v. Secretary of State for India in Council 8 I.A. 46 at p. 61 : 7 C. 301 : 10 C.L.R. 349 and Lalit Mohun Singh Roy v. Chukkun Lal Roy 241. A. 76 at p. 88 : 24 C. 834 : C.W.N. 387. The first contention of the appellant, therefore, that this was intended to be a grant

of a life-interest in favour of the daughter cannot possibly be supported.

6. In so far as the second contention is concerned, it has been argued that the intention of the grantor was that the daughter should take an estate defeasible upon her death without male issue. In support of this contention, reliance has been placed upon the decision of the Judicial Committee in the case of *Bhoobun Mohini Debia v. Hurrish Chunder Chowdhry* 5 I.A. 138 : 4 C. 23 : 3 C.L.R. 339 and reference has been made to the clause in the deed of gift already quoted. It has also been argued that even though the grantor expressly stated that, the property was not to descend in a particular line, effect cannot be given to such an intention unless there has been a valid prior disposition. This last contention is, undoubtedly, sound, as is clear from the observations of their Lordships of the Judicial Committee in *Jatindra Mohan Tagore v. Gonendra Mohan Tagore* 9 B.L.R. 377 : 18 W.R. 359 : I.A. Sup. Vol. 47. But, in the case before us, it is impossible to construe the deed of gift in the way suggested by the appellant. It will be observed that the vernacular words "Tomar swamir kimba tahar waris athaba anya paribar swatwadhikari haibena" have been translated as "Your husband or his heirs or any member of a different family shall not be competent to own and hold the said property." The learned Judges in the Courts below have expressed the opinion that this interpretation is not quite intelligible and that it is rather difficult to say what is meant by paribar. In our opinion, it is fairly clear that "anya paribar" means "another wife" of the husband of the donee. What the grantor evidently intended was that the daughter should take an absolute estate descendible to her children; but that, in the event of her death without children, the property should not; in any event; pass to her husband or to any other wife of her husband, or to the members of her husband's family. But even if we do not interpret the word paribar as meaning another wife of the husband of the grantee, it is quite clear that the object of the donor was that the property should not, upon the death of the donee, pass to her husband or his representatives. The object of the grantor is obvious; and that this was the true object, becomes fairly clear when we remember the law of succession in relation to stridhan property. Under the Bengal School of Hindu law, in respect of the yautuka property of a woman, who dies without children, the very first heir is the husband. The grantor, therefore, laid down that if his daughter should die without any children, the property should not be taken by her husband or his heirs and certainly not by any second wife that might be taken by him. Under these circumstances, we are of opinion that the intention of the grantor was not to exclude female children of his daughter from the line of succession, as has been contended by the appellant. Whether having made an absolute gift in favour of his daughter, he could validly impose such a restriction is a matter which need not be considered on the present occasion. It is clear that the plaintiff, as the daughter of the grantee, is entitled to take the property by right of inheritance. The second ground, therefore, fails.

7. The result is that the decree of the District Judge is affirmed and this appeal dismissed with costs.